



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Felgates Creek and Indian Field Creek along the York River in Yorktown, Virginia;

Restricted Area

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending an existing restricted area to include the waters of Felgates Creek and Indian Field Creek along the York River in Yorktown, Virginia. Naval Weapons Station Yorktown requested the Corps of Engineers modify the existing restricted area to include areas historically noted on nautical charts as closed to the public and traditionally enforced by Commander, Naval Weapons Station Yorktown.

DATES: Effective date: [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922, or Ms. Nicole Woodward, Corps of Engineers, Norfolk District, Regulatory Branch, at 757-201-7122.

SUPPLEMENTARY INFORMATION

Executive Summary

The purpose of this regulatory action is to amend an existing restricted area to include areas historically noted on nautical charts as closed to the public and traditionally enforced by the Commander, Naval Weapons Station Yorktown.

The Corps authority to amend this restricted area is Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3).

Background

The proposed rule was published in the April 4, 2012, edition of the Federal Register (77 FR 20331) and the regulations.gov docket number was COE-2011-0038. In response to the proposal, three comments were received. The commenters stated that the proposed rule will have no effect on historic properties and no adverse impacts on natural heritage resources.

In response to a request by the United States Navy, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is amending 33 CFR Part 334.260 to include a permanent restricted area, in the waters of Felgates Creek and Indian Field Creek along the York River in Yorktown, Virginia.

Procedural Requirements

a. Review under Executive Order 12866. This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act. This rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps determined that the restricted area amendment will have practically no economic impact on the public, no anticipated navigational hazard, and no interference with existing waterway traffic. This rule will have no significant economic impact on small entities.

c. Review under the National Environmental Policy Act. This rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment has been prepared. It may be reviewed at the District office listed at the end of the FOR FURTHER INFORMATION CONTACT section, above.

d. Unfunded Mandates Act. This rule does not impose an enforceable duty among the private sector and, therefore, is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Public Laws 104-4, 109 Stat. 48, 2 U.S.C. 1501 et seq.). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR Part 334 as follows:

PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Revise § 334.260 to read as follows:

§ 334.260 York River, Va.; naval restricted areas.

(a) The areas -- (1) Naval mine service-testing area (prohibited). A rectangular area surrounding Piers 1 and 2, Naval Weapons Station, and extending upstream therefrom, beginning at a point on the shore line at latitude 37°15'25"N, longitude 76°32'32"W; thence to latitude 37°15'42"N, longitude 76°32'06"W; thence to latitude 37°15'27"N, longitude 76°31'48"W; thence to latitude 37°15'05"N, longitude 76°31'27"W; thence to a point on the shore line at latitude 37°14'51"N, longitude 76°31'50"W; and thence along the shore line to the point of beginning.

(2) Naval mine service-testing area (restricted). A rectangular area adjacent to the northeast boundary of the prohibited area described in paragraph (a)(1) of this section, beginning at latitude 37°16'00"N, longitude 76°32'29"W; thence to latitude 37°16'23"N, longitude 76°32'00"W; thence to latitude 37°15'27"N, longitude 76°30'54"W; thence to latitude 37°15'05"N, longitude 76°31'27"W; thence to latitude 37°15'27"N, longitude 76°31'48"W; thence to latitude 37°15'42"N, longitude 76°32'06"W; thence to latitude 37°15'40"N, longitude 76°32'09"W; and thence to the point of beginning.

(3) Explosives-Handling Berth (Naval). A circular area of 600 yards radius with its center at latitude 37°13'56"N, longitude 76°28'48"W.

(4) Felgates Creek (prohibited). Navigable waters of the United States as defined at 33 CFR Part 329 within Felgates Creek from the boundary fence line at the mouth to the mean high water line of the head and all associated tributaries. The area contains the

entirety of Felgates Creek and all associated tributaries south of the line which begins at latitude 37°16'24"N, longitude 76°35'12"W and extends east to latitude 37°16'21"N, longitude 76°35'00"W.

(5) Indian Field Creek (prohibited). Navigable waters of the United States as defined at 33 CFR part 329 within Indian Field Creek from the boundary fence line at the mouth to the mean high water line of the head and all associated tributaries. The area contains the entirety of Indian Field Creek and all associated tributaries south of the line which begins at latitude 37°16'05"N, longitude 76°33'29"W and extends east to latitude 37°16'01"N, longitude 76°33'22"W.

(b) The regulations. (1) All persons and all vessels other than naval craft are forbidden to enter the prohibited area described in paragraph (a)(1) of this section.

(2) Trawling, dragging, and net-fishing are prohibited, and no permanent obstructions may at any time be placed in the area described in paragraph (a)(2) of this section. Upon official notification, any vessel anchored in the area and any person in the area will be required to vacate the area during the actual mine-laying operation. Persons and vessels entering the area during mine-laying operations by aircraft must proceed directly through the area without delay, except in case of emergency. Naval authorities are required to publish advance notice of mine-laying and/or retrieving operations scheduled to be carried on in the area, and during such published periods of operation, fishing or other aquatic activities are forbidden in the area. No vessel will be denied passage through the area at any time during either mine-laying or retrieving operations.

(3) The Explosives-Handling Berth (Naval) described in paragraph (a)(3) of this section is reserved for the exclusive use of naval vessels and except in cases of emergency no other vessel shall anchor therein without the permission of local naval authorities, obtained through the Captain of the Port, U.S. Coast Guard, Norfolk, Virginia. There shall be no restriction on the movement of vessels through the Explosive-Handling Berth.

(4) Vessels shall not be anchored, nor shall persons in the water approach within 300 yards of the perimeter of the Explosives-Handling Berth (Naval) when that berth is occupied by a vessel handling explosives.

(5) All persons and all vessels are forbidden to enter the prohibited areas described in paragraphs (a)(4) and (a)(5) of this section without prior permission of the enforcing agency.

(6) The regulations of this section shall be enforced by the Commander, Naval Weapons Station Yorktown, Virginia, and such agencies as he/she may designate.

Dated: October 1, 2012

Approved: _____

James R. Hannon

Chief, Operations and Regulatory

Directorate of Civil Works

[FR Doc. 2012-24994 Filed

10/10/2012 at 8:45 am; Publication Date:

10/11/2012]